Remarks

The Office Action dated October 19, 2006 has been carefully reviewed and the following remarks are submitted in consequence thereof.

Applicant believes that no extension of term is required and that no additional fee for claims is required. If any additional fee is required for an extension of term or claims, the Commissioner is hereby authorized to charge Deposit Account No. 01-2384.

Claims 1, 5-6, 7, 8-12, 20, 24-25 and 27-54 are now pending, of which claims 39-54 are newly added. It is respectfully submitted that the pending claims define allowable subject matter.

Newly added claims 39-54 correspond to the original dependent claims 5, 8-12, 24, and 27-35. No new matter is introduced in these claims

The specification has been amended to correct a clerical error.

The rejection of claims 36-38 under 35 U.S.C. § 102(e) as being anticipated by Thorne et al. (U.S. Patent No. 6,777,908) is respectfully traversed.

Applicants note the following with respect to the law of anticipation. As explained by the Federal Circuit, the requirements of Section 102, which is generally referred to as "anticipation", requires a disclosure in a single piece of prior art of each and every limitation of a claimed invention. Apple Computer, Inc. v. Articulate Systems, Inc.,57 USPQ2d 1057, 1061 (Fed. Cir. 2000). A finding of anticipation requires that the publication describe all of the elements of the claims arranged as in the patented device. C.R. Bard, Inc. v. M3 Systems, Inc., 48 USPQ2d 1225, 1320 (Fed. Cir. 1998).

The Office Action cites elements (104) and (105) of Thorne et al. as corresponding to the recited capacitors of claims 36-38. Thorne et al., however, disclose no such thing.

Thorne et al. disclose a method and apparatus for monitoring and maintaining charge balances between cells in a battery pack. The elements (104) and (105) of Thorne et al. are accordingly battery cells, and not capacitors. As those in the art would understand, battery cells and

capacitors are fundamentally different in construction, purpose and effect in a circuit, and the because of such differences, the invention presently being claimed in claims 36-38 is not believed to be implicated by Thorne et al. Thorne et al. nowhere disclose capacitors and problems associated therewith which are addressed by the present invention as explained in the present specification and recited in the independent claims 36-38.

Also because of notable differences between battery cells and capacitors, Thorne et al. is not believed to be suggestive of the presently claimed invention recited in claims 36-38, and claims 36-38 are not believed to be obvious over Thorne or the other art of record. As explained by the Federal Circuit, "to establish obviousness based on a combination of the elements disclosed in the prior art, there must be some motivation, suggestion or teaching of the desirability of making the specific combination that was made by the applicant." In re Kotzab, 54 USPQ2d 1308, 1316 (Fed. Cir. 2000). "It is impermissible . . . to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art." In re Wesslau, 147 USPQ 391, 393 (CCPA 1965).

Because of well understood differences in purpose and effect between battery cells disclosed by Thorne and capacitors recited in the independent claims, the method and apparatus disclosed by Thorne for correcting and maintaining voltage balance in multiple cell batteries is not believed to be obviously applicable or desirable for the module, method and system of claims 36-38, respectively, that relate to series connected capacitors.

Claims 36-38 are therefore submitted to be patentable over Thorne et al., and when the recitations of the dependent claims 39-54 are considered in combination with claims 36-38, claims 39-54 are likewise submitted to be patentable over Thorne et al.

Applicants therefore accordingly request that the rejection to claims 36-38 be withdrawn.

In view of the foregoing remarks, all the claims now active in this application are believed to be in condition for allowance. Favorable action is respectfully solicited.

Respectfully Submitted,

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